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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 151

CATHERINE A. LIETZ, PETITIONER

v.

ARTHUR S. FLEMMING, Secretary of Health, Education and Welfare

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Michigan, Southern Division (Pet. App. 12a-15a),[1] has not been reported. The opinion of the Court of Appeals for the Sixth Circuit (Pet. 1a-4a) is reported at 264 F. 2d 311. The order of the court of appeals denying the petition for rehearing (Pet. 5a) has not been reported.

JURISDICTION

The judgment of the court of appeals was entered on March 3, 1959. A timely filed petition for rehearing

[1] "Pet. App." refers to the petitioner's appendix in the court of appeals which constitutes the record filed in this Court.

was denied on April 9, 1959. The petition for a writ of certiorari was filed on June 29, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether Section 109 of the 1954 amendments to the Social Security Act repealed by implication the requirement in Section 202(e)(1) of the Act that the wage earner must have died after 1939.

STATUTES INVOLVED

The pertinent provisions of Section 202(e) of the Social Security Act, as amended, 42 U.S.C. 402(e) and Section 109(a) of the Social Security Amendments of 1954, 42 U.S.C. 415 (Note) (1952 ed., Supp. V), are set forth in the Appendix, *infra*, pp. 11-12.

STATEMENT

On July 13, 1956, petitioner filed a claim for monthly widow's insurance benefits under Section 202(e)(1) of the Social Security Act, 42 U.S.C. 402(e)(1) (*infra*, p. 11), based on the wage record acquired by her husband before his death on May 17, 1938 (Pet. App. 2a-6a). This claim was disallowed by the Bureau of Old Age and Survivors Insurance (Pet. 6a) on the basis that petitioner did not meet the statutory test of being "[t]he widow * * * of an individual who died a fully insured individual *after 1939* * * *" (emphasis added).

Upon appeal of the disallowance, petitioner contended before the Social Security referee that Section 109 of the 1954 amendments to the Social Security Act, 68 Stat. 1052, 1084 (*infra*, p. 12), had "repealed by implication" the requirement that the death of the wage earner have taken place after 1939 (Pet. 6a). In his decision (Pet. 6a-9a), adopted as the Secretary's "final

administrative decision" (Pet. 10a), the referee held that, since Section 109(a)(1) expressly applies only when the wage earner "was not a fully insured individual * * * when he died" (*infra*, p. 12), and since the wage earner, when he died, "was a 'fully insured individual' as that phrase is used in Section 109(a)(1)" of the 1954 amendments (Pet. 8a), Section 109 was not applicable. The referee went on to hold that, in any event, Section 109 had not repealed the requirement in Section 202(e)(1) that the wage earner must have died "after 1939" (Pet. 9a).

The present action was then brought by petitioner in the District Court for the Eastern District of Michigan under Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), to obtain review of the administrative determination. Petitioner claimed that there was an irreconcilable conflict between the "after 1939" requirement of Section 202(e)(1), and the language of Section 109 of the 1954 amendments giving certain benefits to individuals who died prior to September 1, 1950. The district court found no such conflict and affirmed the denial of the petitioner's claim on the basis that the 1954 amendments had not repealed the requirement that the wage earner must have died after 1939 (Pet. App. 12a-15a).

On appeal, the Court of Appeals for the Sixth Circuit found no conflict between the two statutory provisions, and affirmed the denial of the claim on the sole ground that the "after 1939" requirement had not been repealed by the 1954 amendments (Pet. 1a-4a). In denying a petition for rehearing, the court added as a ground for its decision the fact that the wage earner was fully insured at the time of his death, which ren-

dered Section 109 of the 1954 amendments inapplicable to him (Pet. 5a).[2]

ARGUMENT

As in the courts below, petitioner's sole contention in this Court is that Section 109 of the 1954 amendments to the Social Security Act repealed by implication the provision in Section 202(e)(1) of the Act which conditions monthly widow's insurance benefits upon the death of the wage earner "after 1939." This Court has emphasized, however, that "when an affirmative statute contains no expression of a purpose to repeal a prior law, it does not repeal it unless the two acts are in irreconcilable conflict, or unless the later statute covers the whole ground occupied by the earlier and is clearly intended as a substitute for it, and the intention of the legislature to repeal must be clear and manifest." *Red Rock* v. *Henry*, 106 U.S. 596, 601-602; see *Wood* v. *United States*, 16 Pet. 342, 362-363. But even leaving aside the fact that "repeals by implication are not favored" (*United States* v. *Borden Co.*, 308 U.S. 188, 198), petitioner's contention was properly rejected by both courts below. Here the very terms of the two sections, as well as their legislative background and history, demonstrate that they are not inconsistent and that Section 109 was not intended to cover the whole ground, and thus fully support the administrative view that the "after 1939" requirement survived the 1954 amendments. Accordingly, further review by this Court is not warranted.

---

[2] While this holding accorded with the determination of the referee, the district court had held that the wage earner was not fully insured at the time of his death (Pet. App. 12a).

1. *Section 202 of the Social Security Act.* The provision for monthly widow's insurance benefits was made a part of the Social Security Act for the first time by Section 202 of the 1939 amendments, 53 Stat. 1360, 1364-1365. Prior to that time, a relatively small lump-sum payment was the only survivor benefit which the Act afforded. See H.R. Rept. No. 728, 76th Cong., 1st Sess., pp. 5-7.

The monthly-benefit system was to have a prospective effect only. The effective date of the amendment was set at January 1, 1940, and monthly payments were to commence at that time. *Id.* at 9, 33. Accordingly, in Section 202(d)(1) of the amendments (the predecessor of present Section 202(e)(1)), the requirements for entitlement to widow's insurance benefits were stated in the following terms: "Every widow * * * of an individual who died a fully insured individual *after December 31, 1939*, if such widow * * *." 53 Stat. 1365 (emphasis added). The origin of the requirement that a claimant be the widow of a fully insured individual who died after 1939, which petitioner contends was impliedly repealed in the 1954 amendments, is thus explained by the effective date of the benefits to which the requirement applies.[3]

This requirement for widow's benefits has been retained throughout the history of the statute and has survived the Act's various amendments. In 1950, Section 202(e) was amended in order to liberalize the application requirements in ways not otherwise material here.

[3] The same time limitation is included in the requirements for other survivors insurance benefits: child's insurance benefits (42 U.S.C. 402(d)(1)); mother's insurance benefits (42 U.S.C. 402(g)(1)); and parent's insurance benefits (42 U.S.C. 402(h)(1)).

but the "after 1939" provision remained unaffected. Social Security Act Amendments of 1950, Section 202(e), 64 Stat. 477, 484-485.[4] Similarly, in the 1954 amendments the application requirements were further liberalized, but the phrase "who died a fully insured individual after 1939" was retained. 68 Stat. 1085, 42 U.S.C. 402(e)(1). Finally, when Section 202(e)(1) was amended in 1957 (Act of August 30, 1957, Section 3(c), 71 Stat. 518, 519), the 1939 requirement was again left unchanged and therefore appears in the statute's present form. 42 U.S.C. 402(e)(1).

2. *Section 109 of the 1954 amendments.* Section 109 (*infra* p. 12), which was not passed as an amendment to any specific section of the Social Security Act, has a narrow and special application. It does nothing more than redefine the term "fully insured individual" with respect to certain wage earners who died prior to September 1, 1950. Any individual who died prior to that date, who was not fully insured when he died, and who had earned not less than six quarters of coverage,[5] is deemed by the amendment to have died a "fully insured individual."

That Section 109 was not intended to affect the requirement that the wage earner have died after 1939 is demonstrated by its legislative history. As the court below pointed out (Pet. 4a), the Senate Report, in directly referring to the problem presented by this case, described the relationship between Section 202(e)

[4] The only pertinent change was the replacement of "after December 31, 1939," with "after 1939."

[5] A "quarter of coverage" is a period of three calendar months in which the insured has had certain minimum earnings. See 42 U.S.C. 413(a).

of the Act and Section 109 of the amendments (S. Rept. No. 1987, 83d Cong., 2d Sess., pp. 4-5):

> 6. *Eligibility for benefits.*
>
> * * * * *
>
> (b) Benefits would be paid to the surviving aged widow, widowed mother, and children, or parents of any individual who died *after 1939 and prior to September 1, 1950*, and had at least 6 quarters of coverage. [Emphasis added.]

The limited purpose of Section 109 becomes even clearer upon an examination of the reason for its application to individuals who died "prior to September 1, 1950." The Social Security Act had been amended in 1950 and these amendments "greatly liberalized the requirements for insured status by granting a 'new start' whereby an individual was fully insured if he had quarters of coverage (acquired at any time) equal in number to half the calendar quarters elapsing after 1950 (rather than 1936)." *Id.* at 19. Survivors of wage earners who had died prior to 1950 could not benefit from these liberalized conditions for "fully insured" status. Such individuals were therefore retroactively given a "fully insured" status as of the time of death, provided that such death occurred prior to September 1, 1950, and provided that they earned at least six quarters of coverage. See *Hearings Before the Committee on Finance of the Senate on H. R. 9366*, 83d Cong., 2d Sess., p. 218. An additional reason for limiting the application of Section 109 to the survivors of wage earners who died before September 1, 1950, was to avoid making the benefit of this section applicable to dependent widower's insurance benefits which, under

Section 202(f) of the Act, 42 U.S.C. 402(f), are available only in cases of death after August 1950. S. Rept. No. 1987, 83d Cong., 2d Sess., p. 77.

It is also to be noted that in 1955 Congress considered a proposed amendment to Section 109 which would have given it the effect for which petitioner contends. A bill introduced as H.R. 2668, 101 Cong. Rec. 509, 84th Cong., 1st Sess., provided:

> That section 109(a) of the Social Security Amendments of 1954 is amended by adding at the end thereof the following new sentence: "Any such individual who died prior to 1940 shall, for purposes of subsections (d), (e), (g), and (h) of section 202 of the Social Security Act, be deemed to have died after 1939."

The bill was never reported out of committee and, thus, the benefits of Section 202(e)(1) of the Act were not extended to persons in petitioner's situation.

3. *Administrative construction.* Until 1951, the regulations pursuant to Section 202 stated that a widow was entitled to widow's insurance benefits only if the wage earner died after December 31, 1939. 12 F.R. 575. In 1951, a new regulation, like the 1950 amendments to the Act (see *supra*, p. 6, fn. 5), changed the date merely in form (16 F.R. 13046):

> A widow is entitled to widow's insurance benefits if she:
>
> (a) is the widow * * * of an individual who died after 1939, and who, at the time of such death, was fully insured * * *.

This regulation continued in effect until the 1954 amendments to the Act were passed.

From its inception Section 109(a) of the 1954 amendments was administratively construed as having no effect on the "after 1939" requirement. Thus, the regulations adopted in 1955, incorporating the 1954 amendment to Section 202(e)(1) with respect to filing applications, made no change in even the language of the "after 1939" requirement. 20 F.R. 2657. As a result, the language of the 1951 regulations, quoted above, is now still in effect. 20 C.F.R. 404.319.

This administrative construction is, of course, entitled to great weight. *United States* v. *American Trucking Associations*, 310 U.S. 534; *McLaren* v. *Fleischer*, 256 U.S. 477, 481. Moreover, reenactment of the statute by Congress[6] without disapproval of the accompanying regulations gives them the added sanction of implied legislative approval. *Helvering* v. *Griffiths*, 318 U.S. 371, 395-397; *Helvering* v. *Winmill*, 305 U.S. 79, 83; *United States* v. *Dakota-Montana Oil Co.*, 288 U.S. 459, 466.[7]

[6] While the 1954 amendments did not formally reenact Section 202(e), the amendments to Title II of the Act were so extensive (68 Stat. 1052-1087) that it may fairly be said that the provisions left unchanged were in effect reenacted.

[7] As noted above (*supra*, pp. 3-4), the court of appeals alternatively determined that Section 109 was not applicable because the wage earner was fully insured at the time of his death. We submit that this alternative holding was also correct and, in the event that the petition for a writ of certiorari is granted, we will urge it as an additional ground for affirmance.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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AUGUST 1959.

APPENDIX

Section 202(e)(1) of the Social Security Act, as amended, 68 Stat. 1085, 42 U.S.C. 402(e)(1), provides:

(1) The widow (as defined in section 416(c) of this title) of an individual who died a fully insured individual after 1939, if such widow—

(A) has not remarried,

(B) has attained retirement age,

(C) [42 U.S.C. (1952 ed., Supp. V) 402(e)(1)] (i) has filed application for widow's insurance benefits or was entitled, after attainment of retirement age, to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, or

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age,

(D) [42 U.S.C. (1952 ed., Supp. V) 402(e)(1)] is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of her deceased husband.

(E) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of her deceased husband,

shall be entitled to a widow's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, or becomes entitled to an

old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of her deceased husband.

Section 109(a) of the Social Security Amendments of 1954, 68 Stat. 1052, 1084 (42 U.S.C. 415 (Note) (1952 ed., Supp. V)), provides:

> SEC. 109 (a) In the case of any individual—
>
> (1) who died prior to September 1, 1950, and was not a fully insured individual (under title II of the Social Security Act), when he died, and
>
> (2) who had not less than six quarters of coverage as defined in such title),
>
> such individual shall, except for purposes of determining entitlement of a former wife divorced to benefits under section 202(g) of the Social Security Act, be deemed to have died a fully insured individual. Such individual's primary insurance amount shall be computed under subsection (a) (2) of section 215 of such Act. For the purpose of such computation, the provisions of section 215(d) (3) of such Act shall apply if such individual died a currently insured individual (under title II of such Act) and any other person was entitled on the basis of his wages to monthly benefits or a lump-sum death payment under section 202 of such Act; in all other cases the provisions of section 215(d) (4) shall be applicable, except that such individual's closing date shall be the first day of the quarter in which he died. In the case of any such individual, the requirement in subsection (h) of section 202 of such Act that proof of support be filed within two years of the date of his death shall not apply if such proof is filed before September 1956.

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